IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WA.No. 725 of 2007()

AGAINST THE JUDGEMENT IN WPC.8639/2007 Dated 14/03/2007
.....

APPELLANTS/PETITIONERS
---

1. THRISSUR BUILDERS PRIVATE LIMITED,
XXV/1160/1, MACHINGAL LANE, THRISSUR VILLAGE,
THRISSUR MAIN P.O.-680 001, REPRESENTED BY
ITS MANAGING DIRECTOR.

2. SRI. K.A.PADMAKUMAR, AGED 39 YEARS,
S/O. K.NARAYANAN NAIR, RESIDING AT AKSHAYA,
POOTHOLE P.O., PIN-680 004.

3. THE ASSOCIATION OF BUILDERS AND
DEVELOPERS, THRISSUR, REPRESENTED BY
ITS SECRETARY, SRI. PARAMESWARAN NAIR,
S/O. LATE R.VASU IYER.

BY ADV. SRI.P.GOPINATH MENON

RESPONDENTS/RESPONDENTS
---

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT (TAXES),
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, THRISSUR.

3. THE TAHSILDAR, CHAVAKKAD.

4. THE VILLAGE OFFICER, GURUVAYOOR.

BY GOVERNMENT PLEADER MR.MATHEW G.V.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

W.A.No.725 of 2007

Dated, this the 1st day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

In this writ appeal the appellants are calling in question the orders passed by the learned Single Judge in W.P.(C) No.8639 of 2007 dated 14th March, 2007. By the impugned order the learned Single Judge has rejected the writ petition on the ground that the petitioners have an alternative remedy by way of appeal.

2. Before us, the learned counsel appearing for the appellants would contend that the third respondent in the appeal, namely the Tahsildar, Chavakkad, had issued a notice proposing to bring to tax the apartments owned by the appellants. The third respondent had issued notice to the second appellant who is the Managing Director of the first appellant, inter alia, proposing to levy building tax under the provisions of the Kerala building Tax Act, 1975.

3. It is the case of the appellants that they had filed detailed objections, inter alia, bringing to the notice of the third respondent that they are in no way responsible for payment of the building tax under the Act. It is the further case before this Court that the Tahsildar without considering those objections has proceeded to pass the impugned order.

4. The purpose of issuing a notice and consideration of the objections filed to the said notice has been explained by various High Courts including the apex Court. In the present case, a proposal is made by the Tahsildar to levy building tax under the Act. The said proposal is opposed by filing detailed objections. It was expected of the third respondent to have considered those objections and to have passed an appropriate order. Without doing so, in the present case, he has proceeded to complete the

assessment and also has issued a demand notice against the first appellant. This action of the third respondent, in our opinion, is in violation of the principles of natural justice.

5. Therefore, the impugned order passed by the third respondent Tahsildar requires to be set aside and the matter requires to be remanded to the third respondent for fresh disposal in accordance with law.

6. The learned Single Judge without noticing the aforesaid aspect of the matter has merely relegated the appellants to file appeal as provided under the Act. The findings and conclusions reached by the learned Single Judge, in our opinion, cannot be justified. Therefore, the order passed by the learned Single Judge also requires to be set aside by us.

In the result, the following:

Order

i) The writ appeal is allowed.

ii) The order passed by the learned Single Judge in W.P.(C) No.8639 of 2007 is set aside.

iii) The orders passed by the third respondent Tahsildar is also set aside and the matter is remitted back to the third respondent to redo the matter in accordance with law in the light of the observations made by us in the course of the order.

Ordered accordingly.

(**H.L.Dattu)**
Chief Justice

(K.T.Sankaran)
Judge

vns